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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 EDDIE Z. GARCIA,

12 Plaintiff,

13 v.

14 JEFFERY ANDREW, *et al.*,

15 Defendants.
16

Case No. CV 18-08198 MWF (AFM)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

17 Plaintiff, a state prisoner currently held at the California Men's Colony State
18 Prison in San Luis Obispo, California, filed this *pro se* civil rights Complaint
19 pursuant to 42 U.S.C. § 1983 on September 21, 2018. (ECF No. 1.) Plaintiff
20 subsequently was granted leave to proceed without prepayment of the filing fees.
21 (ECF No. 6.) The Complaint names as defendants eight deputy sheriffs with the
22 Palm Desert Sheriff's Department; all defendants are named in their official as well
23 as individual capacities. (ECF No. 1 at 2-5.) Plaintiff's claims appear to arise from
24 an incident on October 30, 2016, during which the deputies are alleged to have used
25 excessive force against plaintiff. (*Id.* at 3-5.) Plaintiff's Complaint does not
26 expressly set forth any claims, and it does not appear to seek any relief.

27 The Court has screened the Complaint prior to ordering service for purposes
28 of determining whether the action is frivolous or malicious; fails to state a claim on

1 which relief may be granted; or seeks monetary relief against a defendant who is
2 immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2), 1915A(b). The Court’s
3 screening of the pleading under the foregoing statutes is governed by the following
4 standards. A complaint may be dismissed as a matter of law for failure to state a
5 claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts
6 under a cognizable legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d
7 696, 699 (9th Cir. 1990); *see also Rosati v. Igbino*, 791 F.3d 1037, 1039 (9th Cir.
8 2015) (when determining whether a complaint should be dismissed for failure to state
9 a claim under 28 U.S.C. § 1915(e)(2), the court applies the same standard as applied
10 in a motion to dismiss pursuant to Rule 12(b)(6)). In determining whether the
11 pleading states a claim on which relief may be granted, its allegations of material fact
12 must be taken as true and construed in the light most favorable to plaintiff. *See Love*
13 *v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). However, the “tenet that a
14 court must accept as true all of the allegations contained in a complaint is inapplicable
15 to legal conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Nor is the Court
16 “bound to accept as true a legal conclusion couched as a factual allegation.” *Wood*
17 *v. Moss*, 134 S. Ct. 2056, 2065 n.5 (2014) (citing *Iqbal*, 556 U.S. at 678). Rather, a
18 court first “discounts conclusory statements, which are not entitled to the
19 presumption of truth, before determining whether a claim is plausible.” *Salameh v.*
20 *Tarsadia Hotel*, 726 F.3d 1124, 1129 (9th Cir. 2013). Then, “dismissal is appropriate
21 where the plaintiff failed to allege enough facts to state a claim to relief that is
22 plausible on its face.” *Yagman v. Garcetti*, 852 F.3d 859, 863 (9th Cir. 2017)
23 (internal quotation marks omitted).

24 Further, since plaintiff is appearing *pro se*, the Court must construe the
25 allegations of the pleading liberally and must afford plaintiff the benefit of any doubt.
26 *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010); *see also Alvarez v. Hill*, 518
27 F.3d 1152, 1158 (9th Cir. 2008) (because plaintiff was proceeding *pro se*, “the district
28 court was required to ‘afford [him] the benefit of any doubt’ in ascertaining what

1 claims he ‘raised in his complaint’”) (alteration in original). However, the Supreme
2 Court has held that “a plaintiff’s obligation to provide the ‘grounds’ of his
3 ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic
4 recitation of the elements of a cause of action will not do. . . . Factual allegations
5 must be enough to raise a right to relief above the speculative level . . . on the
6 assumption that all the allegations in the complaint are true (even if doubtful in fact).”
7 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted,
8 alteration in original); *see also Iqbal*, 556 U.S. at 678 (To avoid dismissal for failure
9 to state a claim, “a complaint must contain sufficient factual matter, accepted as true,
10 to ‘state a claim to relief that is plausible on its face.’ . . . A claim has facial
11 plausibility when the plaintiff pleads factual content that allows the court to draw the
12 reasonable inference that the defendant is liable for the misconduct alleged.” (internal
13 citation omitted)).

14 In addition, Fed. R. Civ. P. 8(a) (“Rule 8”) states:

15 A pleading that states a claim for relief must contain: (1) a
16 short and plain statement of the grounds for the court’s
17 jurisdiction . . .; (2) *a short and plain statement of the claim*
18 showing that the pleader is entitled to relief; and (3) a
19 demand for the relief sought, which may include relief in
20 the alternative or different types of relief.

21 (Emphasis added). Further, Rule 8(d)(1) provides: “Each allegation must be simple,
22 concise, and direct. No technical form is required.” Although the Court must
23 construe a *pro se* plaintiff’s pleadings liberally, a plaintiff nonetheless must allege a
24 minimum factual and legal basis for each claim that is sufficient to give each
25 defendant fair notice of what plaintiff’s claims are and the grounds upon which they
26 rest. *See, e.g., Brazil v. United States Dep’t of the Navy*, 66 F.3d 193, 199 (9th Cir.
27 1995); *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991) (a complaint must give
28 defendants fair notice of the claims against them). If a plaintiff fails to clearly and
concisely set forth factual allegations sufficient to provide defendants with notice of

1 which defendant is being sued on which theory and what relief is being sought against
2 them, the pleading fails to comply with Rule 8. *See, e.g., McHenry v. Renne*, 84 F.3d
3 1172, 1177-79 (9th Cir. 1996); *Nevijel v. Northcoast Life Ins. Co.*, 651 F.2d 671, 674
4 (9th Cir. 1981). A claim has “substantive plausibility” if a plaintiff alleges “simply,
5 concisely, and directly [the] events” that entitle him to damages. *Johnson v. City of*
6 *Shelby*, 135 S. Ct. 346, 347 (2014). Failure to comply with Rule 8 constitutes an
7 independent basis for dismissal of a pleading that applies even if the claims are not
8 found to be wholly without merit. *See McHenry*, 84 F.3d at 1179; *Nevijel*, 651 F.2d
9 at 673.

10 Following careful review of the Complaint, the Court finds that it fails to
11 comply with Rule 8 because it fails to state a short and plain statement that is
12 sufficient to give each defendant fair notice of what plaintiff’s claims are and the
13 grounds upon which they rest. Further, the Complaint does not seek any relief from
14 any defendant. Accordingly, the Complaint is dismissed with leave to amend. *See*
15 *Rosati*, 791 F.3d at 1039 (“A district court should not dismiss a *pro se* complaint
16 without leave to amend unless it is absolutely clear that the deficiencies of the
17 complaint could not be cured by amendment.”) (internal quotation marks omitted).

18 **If plaintiff desires to pursue this action, he is ORDERED to file a First**
19 **Amended Complaint no later than thirty (30) days after the date of this Order,**
20 **remedying the deficiencies discussed below.** Further, plaintiff is admonished that,
21 if he fails to timely file a First Amended Complaint, or fails to remedy the
22 deficiencies of this pleading as discussed herein, the Court will recommend that this
23 action be dismissed without leave to amend and with prejudice.¹

24
25 ¹ Plaintiff is advised that this Court’s determination herein that the allegations in the
26 Complaint are insufficient to state a particular claim should not be seen as dispositive of
27 that claim. Accordingly, although this Court believes that you have failed to plead sufficient
28 factual matter in your pleading, accepted as true, to state a claim to relief that is plausible
on its face, you are not required to omit any claim or defendant in order to pursue this action.
However, if you decide to pursue a claim in a First Amended Complaint that this Court has
found to be insufficient, then this Court, pursuant to the provisions of 28 U.S.C. § 636,

1 **A. Claims against the deputies in their official capacities**

2 The Complaint purports to name each defendant in his or her official capacity.
3 (ECF No. 1 at 3-5.) Defendants appear to be employees of the Palm Desert Sheriff’s
4 Department (“PDSD”). (*Id.* at 2.) However, the Supreme Court has held that an
5 “official-capacity suit is, in all respects other than name, to be treated as a suit against
6 the entity.” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Such a suit “is not a
7 suit against the official personally, for the real party in interest is the entity.”
8 *Graham*, 473 U.S. at 166. Accordingly, any claim against a defendant who is alleged
9 to be employed by the PDSD in his or her official capacity is treated as a claim against
10 the PDSD.

11 A local government entity such as the PDSD “may not be sued under § 1983
12 for an injury inflicted solely by its employees or agents. Instead, it is when execution
13 of a government’s policy or custom, whether made by its lawmakers or by those
14 whose edicts or acts may fairly be said to represent official policy, inflicts the injury
15 that the government as an entity is responsible under § 1983.” *Monell v. Dep’t of*
16 *Social Servs. of City of New York*, 436 U.S. 658, 694 (1978); *see also Connick v.*
17 *Thompson*, 563 U.S. 51, 60 (2011) (“local governments are responsible only for their
18 own illegal acts”).

19 Here, the Complaint fails to set forth any factual allegations giving rise to a
20 reasonable inference that a specific policy or custom promulgated by the PDSD was
21 the “actionable cause” of the alleged constitutional violation. *See Tsao v. Desert*
22 *Palace, Inc.*, 698 F.3d 1128, 1146 (9th Cir. 2012) (“Under *Monell*, a plaintiff must
23 also show that the policy at issue was the ‘actionable cause’ of the constitutional
24 violation, which requires showing both but for and proximate causation.”). In

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26 ultimately may submit to the assigned district judge a recommendation that such claim be
27 dismissed with prejudice for failure to state a claim, subject to your right at that time to file
28 Objections with the district judge as provided in the Local Rules Governing Duties of
 Magistrate Judges.

1 addition, liability against the PDSO arising from an improper custom or policy may
2 not be premised on an isolated incident such as referenced in plaintiff's factual
3 allegations in the Complaint. *See, e.g., Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir.
4 1996) ("Liability for improper custom may not be predicated on isolated or sporadic
5 incidents; it must be founded upon practices of sufficient duration, frequency and
6 consistency that the conduct has become a traditional method of carrying out
7 policy."); *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443-44 (9th Cir. 1989)
8 ("Consistent with the commonly understood meaning of custom, proof of random
9 acts or isolated events are insufficient to establish custom."), *overruled on other*
10 *grounds, Bull v. City & County of San Francisco*, 595 F.3d 964, 981 (9th Cir. 2010)
11 (en banc). Plaintiff's Complaint fails to set forth any factual allegations concerning
12 any practice or custom of the PDSO that he alleges was a "traditional method of
13 carrying out policy" that caused an alleged constitutional violation.

14 Accordingly, the Court finds that plaintiff's Complaint fails to set forth factual
15 allegations sufficient to allow the Court to draw a reasonable inference that any
16 employee of the PDSO (in his or her official capacity) is liable for any alleged
17 constitutional violation. *See, e.g., Iqbal*, 556 U.S. at 678.

18 **B. Rule 8**

19 Plaintiff's Complaint violates Rule 8 and fails to state a plausible claim against
20 any named defendant. The Complaint includes some factual allegations in a section
21 entitled "Request for Relief," but this section appears to begin in the middle of a
22 sentence, and it is not clear if plaintiff intended to include other facts in his
23 Complaint. (ECF No. 1 at 6.)

24 In this section, plaintiff alleges that Deputy Andrew² shoved plaintiff in the
25 chest, punched plaintiff in the face, threw plaintiff to the ground and then continued
26 to punch plaintiff in the face. Plaintiff told Deputy Andrew that he was not resisting,

27
28 ² The Court notes that plaintiff spelled the name of this defendant as Andrew, Andrews,
and Andrew's in the Complaint. The Court uses "Andrew" for simplicity.

1 but Deputy Andrew continued to assault plaintiff. (*Id.*) As to the other defendants,
2 plaintiff merely makes the conclusory allegation that the “other officers joined in and
3 started beating until [plaintiff] was unconcious [sic].” (*Id.*) Plaintiff later woke up
4 in a hospital, and he suffered fractures and a concussion. (*Id.*)

5 In order to state a federal civil rights claim against a particular defendant,
6 plaintiff must allege that a specific defendant, while acting under color of state law,
7 deprived him of a right guaranteed under the Constitution or a federal statute. *See*
8 *West v. Atkins*, 487 U.S. 42, 48 (1988). “A person deprives another ‘of a
9 constitutional right, within the meaning of section 1983, if he does an affirmative act,
10 participates in another’s affirmative acts, or omits to perform an act which he is
11 legally required to do that *causes* the deprivation of which [the plaintiffs
12 complains].’” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (quoting *Johnson*
13 *v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (emphasis and alteration in original)).
14 Further, “[g]overnment officials may not be held liable for the unconstitutional
15 conduct of their subordinates under a theory of respondeat superior.” *Iqbal*, 556 U.S.
16 at 676. Accordingly, if plaintiff wishes to proceed with any federal civil rights claims
17 in this action, plaintiff must set forth simple, direct, and concise factual allegations
18 showing that each official named as a defendant, “through the official’s own
19 individual actions, has violated the Constitution.” *Id.* at 676-77 (“each Government
20 official, his or her title notwithstanding, is only liable for his or her own
21 misconduct”).

22 In addition, plaintiff’s Complaint fails to raise any specific claim against any
23 defendant. In order to satisfy the requirements of Rule 8, plaintiff’s pleading must
24 set forth a minimum factual or legal basis for each claim that is sufficient to give each
25 defendant fair notice of what plaintiff’s claims are and the grounds upon which they
26 rest. Since plaintiff is a *pro se* litigant, the Court must construe the allegations of the
27 Complaint liberally and must afford plaintiff the benefit of any doubt. That said, the
28 Supreme Court has made clear that the Court has “no obligation to act as counsel or

1 paralegal to *pro se* litigants.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004). Further,
2 plaintiff’s Complaint must be adequate to meet the minimal requirement of Rule 8
3 that a pleading set forth sufficient factual allegations to allow each defendant to
4 discern what he or she is being sued for. *See McHenry*, 84 F.3d at 1177; *see also*
5 *Twombly*, 550 U.S. at 555 (“[f]actual allegations must be enough to raise a right to
6 relief above the speculative level”). In addition, the Supreme Court has held that,
7 while a plaintiff need not plead the legal basis for a claim, the plaintiff must allege
8 “simply, concisely, and directly events” that are sufficient to inform the defendants
9 of the “factual basis” of each claim. *Johnson*, 135 S. Ct. at 347. Here, plaintiff’s
10 Complaint fails to set forth a simple, concise, and direct statement of the events
11 giving rise to any claim that is sufficient to allow any defendant to discern what he
12 or she is being sued for.

13 Further, to the extent that plaintiff is alleging that excessive force was used
14 against him during an arrest, plaintiff’s claims arise under the Fourth Amendment.
15 The Fourth Amendment “guarantees citizens the right ‘to be secure in their persons
16 . . . against unreasonable . . . seizures’ of the person.” *Graham v. Conner*, 490 U.S.
17 386, 394 (1989) (alterations in original). Such claims are “analyzed under the Fourth
18 Amendment’s ‘objective reasonableness standard.’” *Saucier v. Katz*, 533 U.S. 194,
19 204 (2001) (citing *Graham*, 490 U.S. at 388). The “reasonableness” of an officer’s
20 actions “must be judged from the perspective of a reasonable officer on the scene,
21 rather than with the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396. The
22 determination of whether an officer’s use of force was “reasonable” under the Fourth
23 Amendment “requires a careful balancing of the nature and quality of the intrusion
24 on the individual’s Fourth Amendment interests against the countervailing
25 government interests at stake.” *Graham*, 490 U.S. at 396 (internal quotations
26 omitted). Such an analysis requires “careful attention to the facts and circumstances
27 in each particular case, including the severity of the crime at issue, whether the
28 suspect poses an immediate threat to the safety of the officers or others, and whether

1 he is actively resisting arrest or attempting to evade arrest by flight.” *Id.* Moreover,
2 the Supreme Court has held that, in determining whether the force used to effect a
3 particular seizure is “reasonable” under the Fourth Amendment, “the question is
4 whether the officers’ actions are ‘objectively reasonable’ in light of the facts and
5 circumstances confronting them, without regard to their underlying intent or
6 motivation.” *Id.* at 397. As the Ninth Circuit has emphasized, “the most important
7 factor under *Graham* is whether the suspect posed an immediate threat to the safety
8 of the officers or others.” *C.V. v. City of Anaheim*, 823 F.3d 1252, 1255 (9th Cir.
9 2016) (internal quotation marks omitted). Here, because plaintiff fails to set forth
10 any specific claim, fails to allege whether the use of force took place while he was
11 being arrested or under other circumstances, and does not set forth any factual
12 allegations concerning the crime or crimes for which he appears to have been
13 arrested, it is not clear to the Court what the factual basis may be for any claim that
14 plaintiff wishes to raise under the Fourth Amendment.

15 For these reasons, the Court finds that plaintiff’s Complaint violates Rule 8
16 and fails to state a claim against any defendant upon which relief may be granted
17 because it fails to set forth a simple, concise, and direct statement of the factual and
18 legal basis of each of plaintiff’s claims against each defendant. In particular,
19 plaintiff’s Complaint does not simply, concisely, and directly set forth factual
20 allegations sufficient to raise a reasonable inference that any named defendant took
21 any action, participated in the action of another, or failed to perform an act that he or
22 she was legally required to do that *caused* a constitutional deprivation. *See Leer*, 844
23 F.2d at 633.

24 If plaintiff desires to pursue any of his civil rights claims, he should set forth a
25 short, direct, and plain statement of each claim showing that each defendant took a
26 specific action, participated in another’s action, or omitted to perform an action that
27 caused an alleged constitutional deprivation. As discussed above, in order to state a
28 federal civil rights claim against a particular defendant, plaintiff must allege that a

1 specific defendant, while acting under color of state law, deprived him of a right
2 guaranteed under the Constitution or a federal statute. *See West*, 487 U.S. at 48.

3 *****

4 **If plaintiff desires to pursue this action, he is ORDERED to file a First**
5 **Amended Complaint no later than thirty (30) days after the date of this Order,**
6 **remediating the pleading deficiencies discussed above.** The First Amended
7 Complaint should bear the docket number assigned in this case; be labeled "First
8 Amended Complaint"; and be complete in and of itself without reference to the
9 original Complaint, or any other pleading, attachment, or document.

10 The clerk is directed to send plaintiff a blank Central District civil rights
11 complaint form, which plaintiff is encouraged to utilize. Plaintiff is admonished that
12 he must sign and date the civil rights complaint form, and he must use the space
13 provided in the form to set forth all of the claims that he wishes to assert in a First
14 Amended Complaint.

15 In addition, if plaintiff no longer wishes to pursue this action, he may request
16 a voluntary dismissal of the action pursuant to Federal Rule of Civil Procedure 41(a).
17 The clerk also is directed to attach a Notice of Dismissal form for plaintiff's
18 convenience.

19 **Plaintiff is further admonished that, if he fails to timely file a First**
20 **Amended Complaint, or fails to remedy the deficiencies of this pleading as**
21 **discussed herein, the Court will recommend that the action be dismissed on the**
22 **grounds set forth above and for failure to diligently prosecute.**

23 **IT IS SO ORDERED.**

24
25 DATED: 10/11/2018

26 

27 ALEXANDER F. MacKINNON
28 UNITED STATES MAGISTRATE JUDGE